

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

VERSUS

CAUSE NO. 3:03-cr-30-HTW-LGI

ROOSEVELT WALKER

DEFENDANT

MOTION FOR CLARIFICATION

BEFORE THE HONORABLE HENRY T. WINGATE
UNITED STATES DISTRICT COURT JUDGE
DECEMBER 13, 2021
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE GOVERNMENT: THEODORE COOPERSTEIN, ESQUIRE

FOR THE DEFENDANT: OMADARE JUPITER, ESQUIRE

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1 THE COURT: Good afternoon. Call your case, please.

2 MR. COOPERSTEIN: Good afternoon, Your Honor.

3 Ted Cooperstein for the United States. We're here today in the
4 case of *United States of America v. Roosevelt Walker*. Criminal
5 No. 3:03-cr-30-HTW-LGI. We're here today on the defendant's
6 motion for clarification of a prior ruling. And the defendant is
7 represented by the Federal Public Defender, Omadare Jupiter.

8 THE COURT: All right. This case concerns the defendant,
9 Mr. Roosevelt Walker, who is not present. And, Mr. Jupiter, what
10 says you on the presence of Mr. Walker?

11 MR. JUPITER: Mr. Walker has agreed to waive his presence
12 for this hearing, Your Honor.

13 THE COURT: Okay. Then, Mr. Walker's presence at this
14 hearing is hereby waived. Where is his whereabouts?

15 MR. JUPITER: Your Honor, he is in a federal facility,
16 I'm -- I'm embarrassed right now, because I've -- I've spoken to
17 him several times, and I know the facility, but the exact name of
18 the facility escapes me right now.

19 THE COURT: But he is in a federal correctional facility?

20 MR. JUPITER: He is serving this Court's sentence in a
21 federal correctional facility; yes, sir.

22 THE COURT: All right. And that is a penitentiary, is it
23 not?

24 MR. JUPITER: That is correct, U.S.--

25 THE COURT: Now, Mr. Jupiter, it's your motion, so could

1 you go to the podium, please. You can remove your mask while you
2 make your motion.

3 MR. JUPITER: Thank you, Your Honor. Can you hear me,
4 Your Honor?

5 THE COURT: Absolutely. You're good.

6 MR. JUPITER: Yeah, thank you, Your Honor. Your Honor,
7 so, this motion -- I -- I don't have anything substantive to add
8 to what I've stated. We -- obviously, the Court knows -- and
9 excuse me, I don't have any paper with me, but I do have my -- my
10 motion right here.

11 We filed our original motion for compassionate release in
12 this case. As this Court knows, Mr. Walker is serving a life
13 sentence in this case. We filed our original motion August 4th,
14 2020, seeking a reduction in sentence, pursuant to 18 U.S.C. 3582,
15 that was docketed No. 388. And part of our request for release
16 was based on Mr. Walker's medical condition. As has been our
17 practice, we, then, filed a motion on the same date to seek leave
18 to file his medical records under seal. That motion was not
19 granted until after this Court denied the motion. So we never
20 filed those records under seal. The government filed their
21 response in opposition to our motion on August 17, 2020, without
22 any attachments. And then, we filed a motion September 14th,
23 2020, to expedite the hearing, and another motion to file
24 additional medical records under seal.

25 On October 5th, this Court entered an order denying our

1 motion for compassionate release and ruled that -- the Court never
2 ruled on Mr. Walker's first motion to file his medical records
3 under seal, or his second motion to file his medical records under
4 seal.

5 In the District Court's order, it stated, "The
6 government" -- I'm quoting from the -- from this Court's order.
7 "The government provided copies of Walker's medical records from
8 BOP, and they show he is under constant and continuous care
9 to manage his medical conditions. This Court does not find that
10 Walker has presented evidence that he suffers from a terminal
11 illness with an end-of-life trajectory."

12 And it goes on to deny, in a 24-page decision, the -- for
13 various different reasons, our motion for compassionate release.
14 We sought to appeal to the Fifth Circuit, and then -- so I called
15 the government counsel when I filed my appeal and said, "Well, we
16 need to make the medical records that were provided to the Court a
17 part of the record."

18 Government counsel indicated that they had never provided
19 the Court with any medical records. I contacted probation, and I
20 said, "Well, did you guys give the Court medical records?" They
21 indicated that they would not and could not do that. Along with,
22 I contacted someone in BOP to see if the Court got Mr. Walker's
23 medical records some other kind of way, being that they were
24 referenced in the Court's order. So no one seemed to be able to
25 say how the Court had received medical records. So we entered a

1 joint motion to the Fifth Circuit to send the case back for
2 clarification to figure out what medical records were reviewed,
3 where did the Court get the medical records, so on and so forth.

4 The Fifth Circuit granted our joint motion -- I say,
5 "our," mine and the government's motion -- to send the case back
6 to the District Court, to Your Honor, for that clarification. And
7 then I filed this motion for the Court to clarify where -- what
8 records were received, where did the Court get the records.
9 And -- and so that we could make the records a part of the Court
10 record. So that's -- that's the purpose of us being here today.

11 THE COURT: One second. Don't move. I'm on page 10 of my
12 opinion. The last paragraph on page 10, it says the following:
13 "Walker lists the following medical conditions as placing him at
14 risk for contracting COVID-19: pulmonary hypertension (high blood
15 pressure); diabetes; cellulitis; hyperlipidemia (high
16 cholesterol); and asthma."

17 Now, your client did contend that he suffered from these
18 particular conditions, correct?

19 MR. JUPITER: Yes, Your Honor.

20 THE COURT: Okay. The next sentence: "The government
21 provided copies of Walker's medical records from BOP, and they
22 show that he is under constant and continuous care to manage his
23 medical conditions."

24 Now, this is the sentence that bothers you. Is that
25 correct?

1 MR. JUPITER: Well, I think that's the sentence that would
2 indicate to me that the Court had records.

3 THE COURT: I understand that, but that's the sentence
4 that's the focus of this particular motion, correct? I mean,
5 that's the sentence --

6 MR. JUPITER: That's part of it.

7 THE COURT: Because you wanted to -- you were concerned
8 about the medical records from BOP, and they show that he is under
9 constant and continuous care to manage his medical conditions.
10 And you are curious as to where the Court obtained copies of his
11 medical records, correct?

12 MR. JUPITER: Correct, Your Honor.

13 THE COURT: Okay. Now, this next sentence: "This Court
14 does not find that Walker has presented evidence that he suffers a
15 terminal illness with an end-of-life trajectory. Similarly, this
16 Court does not find that Walker's ability to provide self-care,
17 while in the custody of BOP is diminished and that he is not
18 expected to recover."

19 Now, what, again, is the centerpiece of your motion, is
20 this statement that this Court had copies of his medical records,
21 correct?

22 MR. JUPITER: Had copies and reviewed copies of his
23 medical records in making this decision, yes, Your Honor.

24 THE COURT: All right. Correct. Now, I've worked on this
25 case with my law clerk, Mr. Adam, over here -- Adam, over here.

1 And Adam, since you worked on this case with me, and provided some
2 matters on this particular order -- whereas, the factual basis
3 concerning the trial, and all of the evidence concerning the
4 trial, I wrote all of that personally.

5 Now -- but now, this part about the medical records,
6 because everything that concerns the trial, which starts over on
7 "Danger to the community" on page 13, where it starts, "Even if
8 this Court were to find that Walker had presented extraordinary
9 and compelling reasons to grant compassionate release, he still
10 has not demonstrated that he, 'is not a danger to the safety of
11 any other person or to the community, as provided in Title 18
12 United States Code, Section 3142(g).'"

13 And from there on, I have specific recollection of having
14 written everything in this opinion, because all of the commentary
15 from that point on concerned the trial, the background of the
16 prosecution, and what occurred during the course of the trial, et
17 cetera. So I specifically wrote all that. This part about the
18 records, this came from the law clerk, so I'll put him on the
19 stand and let him testify.

20 So Terri, would you swear in Mr. Adam.

21 (Witness sworn.)

22 ADAM BOLLAERT,

23 Having been duly sworn and examined, testified as follows:

24 THE COURT: Would state your full name?

25 THE WITNESS: Yes, sir. My name is Adam Anthony Bollaert.

1 THE COURT: And you are one of my three law clerks. Is
2 that correct?

3 THE WITNESS: Yes, sir.

4 THE COURT: And, in fact, you are the career law clerk?

5 THE WITNESS: Yes, sir.

6 THE COURT: Which means you don't have a term under which
7 you serve as law clerk?

8 THE WITNESS: Yes, sir.

9 THE COURT: And that, whereas other law clerks rotate
10 after a certain amount of time and are required to rotate, you are
11 not required to rotate.

12 THE WITNESS: That's correct, sir.

13 THE COURT: In addition, there are some other special
14 considerations provided to you, namely, with regard to salary,
15 because you're paid more than the other law clerks, correct?

16 THE WITNESS: Yes, sir.

17 THE COURT: And in addition, you have a retirement
18 provision as a career law clerk?

19 THE WITNESS: Yes, sir.

20 THE COURT: Other law clerks don't have that?

21 THE WITNESS: That's correct, sir.

22 THE COURT: Now, when I mentioned this case here,
23 Roosevelt Walker, to my courtroom deputy, you, then, came in to
24 see me.

25 THE WITNESS: Yes, sir.

1 THE COURT: And you said that I didn't have to have this
2 hearing, correct?

3 THE WITNESS: That's correct, sir.

4 THE COURT: And, please, explain why you said I didn't
5 have to have this hearing on those medical records.

6 THE WITNESS: Yes, Your Honor. That was a scrivener's
7 error on the medical records that was -- the Court didn't review
8 any medical records whatsoever. I thought we could just enter an
9 amended order removing the offending language.

10 THE COURT: But now, on this part about the medical
11 records --

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: -- when I was given the draft on this matter,
14 I looked through it, and I saw that the draft of this opinion
15 follows the other COVID-19 compassionate release orders that I had
16 signed in other cases, that is, on the backdrop of what BOP has
17 done with regard to the COVID-19 pandemic. And that is the same
18 language, is it not?

19 THE WITNESS: Yes, sir.

20 THE COURT: So that I have -- or had, a number of cases on
21 this particular matter, and I still have a few left, but this
22 backdrop on this whole matter, starting on page 2, where the
23 heading is "BOP and the COVID-19 pandemic." That gives the
24 backdrop of what BOP has been doing in addressing COVID cases
25 within its jurisdiction. Is that correct?

1 THE WITNESS: That is correct, sir.

2 THE COURT: And in all of the cases that I have dealt with
3 concerning the COVID matter, they all had the same backdrop,
4 because it was common to all of those cases.

5 THE WITNESS: Correct.

6 THE COURT: So then, since the backdrop was the same, what
7 I would do is just make it more specific to the case of the
8 individual who is filing.

9 THE WITNESS: Correct.

10 THE COURT: And since I tried the case, since I was the
11 trial judge with Roosevelt Walker, then after we go through what I
12 would consider to be boilerplate background information concerning
13 what BOP was doing, and once we got past the analysis, which is
14 also the same that it would be in any other case; and the
15 exhaustion of -- if there's been exhaustion, it would be the same.
16 The burden of proof would be the same in that section. But then,
17 where it would be more specialized is where this opinion, as other
18 opinions, would get to the particulars concerning this particular
19 individual.

20 THE WITNESS: That's correct, sir.

21 THE COURT: And so, in his case, starting on page 13,
22 subsection (d), that is, the danger to the community, then I
23 personally wrote all of that?

24 THE WITNESS: Yes, sir.

25 THE COURT: So that was not assisted by you in the

1 background on all of that part?

2 THE WITNESS: No, sir, aside from checking dates for you.

3 THE COURT: Okay. And so I did all of that. Now, but
4 then, this hearing is to address Mr. Jupiter's concern about
5 medical records being submitted to the Court that the Court would
6 have read, unbeknownst to both the defense and prosecution. Did I
7 receive any medical records?

8 THE WITNESS: No, sir, you did not.

9 THE COURT: So this sentence that's in this opinion is
10 wrong?

11 THE WITNESS: Yes, sir. That's my error.

12 THE COURT: Well, then, can you tell us how that sentence
13 found its way into what otherwise would have been a boilerplate
14 introduction?

15 THE WITNESS: When I was going through the records,
16 Your Honor, looking at everything, looking at the motion, I had
17 been working on several of them all at once. And I just, I missed
18 that line. I just, that was my failure. That was my error.

19 THE COURT: So then, how'd this line get in the order?
20 Did you place it in here?

21 THE WITNESS: It was part of another order that I
22 modified, so I took the boilerplate language from another order,
23 and I don't remember the defendant's name. And then I modified it
24 to reflect the prison he's at, what he alleges were his medical
25 conditions, so on and so forth.

1 THE COURT: So this matter about a medical -- medical
2 records came from somewhere else?

3 THE WITNESS: It came from another -- another order that
4 we had drafted, we did have medical records on, and I just -- I
5 must have missed it in this one. And like I say, that's my error.

6 THE COURT: "On the danger to the community," I wrote all
7 of that?

8 THE WITNESS: Yes, sir. Every bit of it.

9 THE COURT: Now, that was my next question. Did you have
10 anything to do with the danger to the community?

11 THE WITNESS: No, sir.

12 THE COURT: And after the "danger to the community," that
13 whole section that goes up to -- up to "home detention." "Home
14 detention" was part of the boilerplate in other cases, was it not?

15 THE WITNESS: Yes, sir.

16 THE COURT: Because it says, "Walker, alternatively,
17 requests that this Court order BOP to place Walker on home
18 confinement to serve the remainder of his sentence. Once a
19 sentence is imposed, BOP is clearly solely responsible for
20 determining an inmate's place of incarceration. See 18 U.S.C.
21 Section 3621(b)." There's a footnote 8 there, and some cases are
22 quoted. "A Court has no authority to designate a prisoner's place
23 of incarceration." And a case is cited for that proposition.
24 That was a boilerplate that I put in my COVID cases where somebody
25 had requested a special place of detention. Is that correct?

1 THE WITNESS: Yes, sir.

2 THE COURT: And then, there's the conclusion where the
3 motion for compassionate release due to COVID-19 is denied for the
4 reasons stated above. And who made that conclusion?

5 THE WITNESS: You did, sir.

6 THE COURT: With regard, now -- you are now testifying as
7 a witness here about what transpired?

8 THE WITNESS: Yes, sir.

9 THE COURT: On Friday, you said that after you heard me
10 mention to Terri, the courtroom deputy, that this matter was set
11 for today --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- you, then, came to my office to tell me
14 what?

15 THE WITNESS: To tell you that I didn't think we needed to
16 have a hearing; we could enter the amended order removing the
17 offending language.

18 THE COURT: And the offending language concerned the
19 medical records?

20 THE WITNESS: Correct.

21 THE COURT: Did we have any discussion about this
22 offending language?

23 THE WITNESS: I think I told you what they were asking
24 about, but I honestly can't remember, sir.

25 THE COURT: Other than what you were telling me at that

1 time --

2 THE WITNESS: Mm-hmm.

3 THE COURT: -- had we had any conversation about this
4 matter prior to that?

5 THE WITNESS: Not since we entered the order, no, sir.

6 THE COURT: This matter was sent back from the Fifth
7 Circuit on agreed order of counsel?

8 THE WITNESS: Correct.

9 THE COURT: Did I have any conversation with you as to why
10 it was sent back?

11 THE WITNESS: No, sir.

12 THE COURT: Was I ever, at any point, told as to why it
13 was sent back?

14 THE WITNESS: Not as far as I'm aware.

15 THE COURT: Did you know why it was sent back?

16 THE WITNESS: I knew about it once I saw the motion for
17 clarification, sir.

18 THE COURT: Did we discuss that motion for clarification?

19 THE WITNESS: Terri and I talked about it and --

20 THE COURT: No, wouldn't that be before Terri got here,
21 when the motion came in, or I don't know. You tell me.

22 THE WITNESS: I don't know. I thought it was recently
23 filed.

24 THE COURT: But a motion for clarification? Well, when
25 the matter came back from the Fifth Circuit, did we have any

1 conversation about why it came back?

2 THE WITNESS: No, sir.

3 THE COURT: Was there any conversation that Roosevelt
4 Walker's motion is back here before the Court?

5 THE WITNESS: No, sir.

6 THE COURT: So then, when this motion was filed for
7 clarification -- here it says it was filed on September 9, 2021.
8 Did you talk to me about this matter?

9 THE WITNESS: No, sir.

10 THE COURT: So, who set this for hearing?

11 THE WITNESS: Terri and I talked about it, and I thought
12 it might need to go for a hearing at that point. I think that's
13 what happened.

14 THE COURT: Well, tell me what you think happened.

15 THE WITNESS: I think Terri asked me what we needed to do
16 on that motion, and I said, "We probably should set it for a
17 hearing," sir.

18 THE COURT: Was I involved in setting this for a hearing?

19 THE WITNESS: No, sir.

20 THE COURT: So to your knowledge, the first time I knew
21 this matter was even set for a hearing is when I looked at the
22 docket sheet to see what I had in front of me?

23 THE WITNESS: Yes, sir.

24 THE COURT: So it was Friday when you came into my office,
25 correct?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. And it was Friday when you said that I
3 didn't need to have a hearing?

4 THE WITNESS: That's correct, sir.

5 THE COURT: And my response was what?

6 THE WITNESS: That we were going to have the hearing.

7 THE COURT: Okay. All right. Stay right there.

8 THE WITNESS: Yes, sir.

9 THE COURT: Mr. Jupiter, it's your motion, so is there
10 anything you want to ask, Mr. Jupiter?

11 CROSS-EXAMINATION

12 BY MR. JUPITER:

13 Q. Good afternoon.

14 A. Good afternoon, sir.

15 Q. You've been a law clerk with Judge Wingate for how long?

16 A. September of 2016, so just over five years.

17 Q. And you've had other matters come back from the Fifth Circuit
18 before, right? Let me clarify. You've -- you've had -- you --
19 you provide legal -- you provide counsel to Judge Wingate on
20 matters that are pending before Judge Wingate?

21 A. I believe that's a correct statement, if I understand the way
22 you're saying it.

23 Q. Okay. If I filed a motion and it was denied by
24 Judge Wingate, and I appeal to the Fifth Circuit --

25 A. Mm-hmm.

1 Q. -- and then it comes back to Judge Wingate --

2 A. Yes, sir.

3 Q. So when it would come back to Judge Wingate, what -- there's
4 something that comes back to Judge Wingate from the Fifth Circuit,
5 the chambers are notified. Who would be notified in the chambers
6 that, Hey, something came back from the Fifth Circuit?

7 A. Typically, it goes to our chamber's e-mail, and then also
8 typically one of the parties will e-mail us and counsel opposite
9 saying, Hey, this came back from the Fifth Circuit.

10 Q. Okay. So when it comes back from the Fifth Circuit and it
11 states -- you say it will go to chambers e-mail?

12 A. Yes, sir.

13 Q. Who checks that e-mail?

14 A. All of us.

15 Q. Okay. So you checked that e-mail, and you saw it came back
16 from the Fifth Circuit?

17 A. I can't recall seeing it, but it came back from the
18 Fifth Circuit.

19 Q. Well, obviously, it must have, right?

20 A. Sure.

21 Q. It did come back from the Fifth Circuit. Do you know what
22 date it got back from the Fifth Circuit?

23 A. I do not, sir.

24 Q. Okay. So it came back from the Fifth Circuit, and you said,
25 all of you, in normal course, would have checked that e-mail from

1 the Fifth Circuit that it's back?

2 A. Yes, sir.

3 Q. It's been remanded by joint remand, correct?

4 A. It comes in as an ECF notice for us.

5 THE COURT: Explain to him who you mean by, "all of us
6 would check it."

7 THE WITNESS: Oh, I meant all of the law clerks at the
8 time, because it's my understanding that it came back before Terri
9 got here.

10 THE COURT: Okay.

11 THE WITNESS: Now, it's all the law clerks and Terri.

12 BY MR. JUPITER:

13 Q. Okay. All right. So at that point, you're saying that you
14 have no way -- unless counsel contacts you, you have no way of
15 finding out why it came back?

16 A. That's not -- that's not what I said.

17 Q. Right. Because you have access to what was filed in the
18 Fifth Circuit to have it remanded back, don't you?

19 A. Correct. Through Pacer.

20 Q. Right, through Pacer. So you have at your fingertips
21 something that would have shown our joint motion as to why it came
22 back, correct? If it came back by a joint motion of the parties,
23 you have access to how did the parties get it back over here?

24 A. That's correct.

25 Q. Okay. You didn't check that, did you?

1 A. Not that I recall, no, sir.

2 Q. You don't have any information that anyone else in chambers
3 checked that when it came back here?

4 A. Not that I know of, sir.

5 Q. All right. And you're saying -- and nobody from -- none of
6 the parties contacted you?

7 A. Not that I'm aware of, sir.

8 Q. Okay. Then, after that, there's a motion for clarification
9 filed in September -- I believe, September 9th?

10 A. Yes, sir.

11 Q. Three months ago, correct?

12 A. That's correct.

13 Q. All right. So when a motion is filed, who would have -- who
14 would have reviewed that motion coming in?

15 A. Again, it comes in through the chamber's e-mail, through an
16 ECF notification.

17 Q. Okay. And who notifies the judge that, Hey, there's a motion
18 for clarification on something that came in this case that we
19 don't know why it's here? Who would notify the judge?

20 A. Well, in this case, that should have been me.

21 Q. Okay. Did you notify Judge Wingate --

22 A. I did not.

23 Q. -- at that time that there was a motion for clarification?

24 A. I did not.

25 Q. Are you aware of anybody contacting Judge Wingate and saying,

1 Hey, this motion that you disposed of went to the Fifth Circuit
2 and came back, and now they're asking for clarification, the
3 reason why it was filed, the remand was brought, and we set this
4 for a hearing?

5 A. I -- I don't know that anybody did that.

6 Q. Or could we just set out, as you indicated, explain what
7 happened here in this -- in this, you would agree with me,
8 contradictory order, correct?

9 A. I wouldn't agree that it's a contradictory order.

10 Q. Okay. You said "offend-" -- I'm sorry. You characterized it
11 as "offending language," right?

12 A. The language that you find offensive, sir, yes.

13 Q. Okay. I'm sorry. I didn't know you were referring to me.
14 You're saying the language that counsel found offending?

15 A. Yes, sir.

16 Q. Because I didn't characterize it as offending.

17 A. Excuse me.

18 Q. Okay. I thought that's the way you were characterizing it.
19 How -- you were characterizing it in which way, as a scrivener's
20 error?

21 A. Correct.

22 Q. It was a statement of fact, right?

23 A. It was a statement of fact, yes.

24 Q. It was a statement of fact that the Court reviewed medical
25 records, correct?

1 A. Correct.

2 Q. And that was a statement that you wrote, correct?

3 A. Correct.

4 Q. To be part of Judge Wingate's order?

5 A. Correct.

6 Q. Okay. Now, let me ask you this: Are you saying as a matter
7 of course, that Judge Wingate does not personally review medical
8 records on a motion for compassionate release?

9 A. No, sir. That's not what I'm saying.

10 Q. Okay. Are you saying in the majority of cases, that he does
11 not review the medical records on motions for compassionate
12 release?

13 A. That's not what I'm saying either. To my knowledge,
14 Judge Wingate reviews every single document that's put in front of
15 him. He reads them line-by-line, word-for-word.

16 Q. And that's what he did in this case? I'm asking you. I need
17 a response.

18 A. Yes, sir.

19 Q. He read line-by-line, that the Court reviewed the records?

20 A. That -- he read that.

21 Q. And -- but, in fact, the Court had not reviewed any records.

22 A. Again, that was my error, sir.

23 Q. Well, I mean, you didn't sign the order, did you?

24 A. There's no way I can sign the order.

25 Q. Right. Judge Wingate signed the order, right?

1 A. Correct.

2 Q. And you're -- you're saying that Judge Wingate read -- did he
3 rely on the fact -- was he relying -- let me ask it to you this
4 way: Do you read records for him and tell him, Look, I've read
5 the records, and you can just say this?

6 A. That's -- that's not the way Judge Wingate works.

7 Q. I didn't think so. That's why I'm asking you.

8 A. That's not the way he works.

9 Q. I didn't think so.

10 A. I mean, you've been here for sentencing hearings. You know
11 he goes through everything.

12 Q. That's exactly why I'm asking the question, because I -- I've
13 been here a lot. So he -- he would be the one who would read the
14 records?

15 A. Well, we both would typically read the records.

16 Q. Okay. But I'm just trying to figure out, if he read
17 line-by-line in his order that "the Court has reviewed records
18 provided by the government." If he read that and said, "The
19 records indicate that these -- that he has these conditions," and
20 made a finding that "these conditions do not put him" -- those
21 words, "in trajectory of life." I'm -- I'm messing up the exact
22 wording, but something along those lines.

23 And, in fact, not only had he not read these records, but you
24 had not read these records. Are you saying that he read that
25 line-by-line, or it was just a cut and paste?

1 THE COURT: How would he know what I did?

2 MR. JUPITER: That -- Your Honor, he's testified. I'm
3 going off of what he's testified to. He can testify --

4 THE COURT: But how would he know what I did on reading?

5 MR. JUPITER: Well, he has testified that you read it
6 line-by-line.

7 THE COURT: On a normal case, but he doesn't know what I
8 did on this one. So go ahead and ask your questions, though.

9 BY MR. JUPITER:

10 Q. Is that what he normally does, read it line-by-line?

11 A. That's been my experience with Judge Wingate, but I cannot
12 testify what he does specifically on each and every case.

13 Q. Okay. Okay. But you're saying that in this particular case,
14 it was a cut and paste?

15 A. I'm saying, in this particular case, we had been working on
16 multiple reviews all at the same time, and if it was anyone's
17 error, it was my error. That's what I am saying.

18 Q. And the first time that you had a discussion with him about
19 this motion that was filed three months ago, was Friday?

20 A. That's correct.

21 MR. JUPITER: No further questions.

22 THE COURT: Any questions over here?

23 MR. COOPERSTEIN: Yes. Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. COOPERSTEIN:

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. Just briefly to confirm a few points.

4 A. Yes, sir.

5 Q. You stated that you identified a scrivener's error, that
6 issue in this particular opinion of the Court?

7 A. Yes, sir.

8 Q. And you recommended an amendment to correct the scrivener's
9 error, correct?

10 A. Correct.

11 Q. Now, if that scrivener's error were corrected, would the
12 outcome or the decision of the Court, in this particular order,
13 remain the same?

14 A. That's not for me to say, sir. You'd have to ask
15 Judge Wingate. I apologize.

16 Q. Generally, would the portion of the order remain the same but
17 for that scrivener's error, and I'm referring to the portion that
18 addresses the claimed medical conditions stated and listed by the
19 defendant in his motion?

20 A. You're saying if we take out that sentence --

21 Q. Yes.

22 A. -- would it change what I would propose to Judge Wingate, or
23 what Judge Wingate would sign?

24 Q. I see. What I'm specifically getting at is that, if we were
25 to follow your proposed amendment, affecting that one sentence at

1 issue, I guess, my question assumes the remainder of the opinion
2 would remain unchanged?

3 A. The remainder of my proposed opinion to Judge Wingate --

4 Q. All right.

5 A. -- would remain unchanged --

6 Q. Yeah.

7 A. -- but that doesn't say how Judge Wingate would rule.

8 Q. Okay. I'm focusing on the order as it exists --

9 A. Mm-hmm.

10 Q. -- with the identified scrivener's error, and I'm supposing,
11 for purposes of my question, that we would remove or alter, as you
12 proposed, that scrivener's error, leaving the rest unchanged.

13 A. I would remove my -- a proposed amendment would remove that
14 language referencing any medical records, and then I would give it
15 to Judge Wingate for his review, his corrections or his signature,
16 whichever he felt was more appropriate.

17 Q. I see. So what I'm focusing on in my line of questioning
18 right now is: Only if we made that amendment to remove that
19 scrivener's error and left all -- assuming all else remained
20 unchanged, I'm focusing my questions to you, sir, as to how you
21 believe that might affect the import of the remaining opinion, the
22 remainder of the order without that sentence that would be
23 amended. Is that too much of a hypothetical for you?

24 A. I'm -- I'm not sure I can answer that question, quite
25 honestly.

1 Q. Let me say it this way: What I'm assuming is that if we were
2 to make the amendment of the scrivener's error that's been
3 identified --

4 A. Mm-hmm.

5 Q. -- and leave all else unchanged as it exists in the Court's
6 order, would that affect the outcome or the proposed -- in terms
7 of the language as written now, without any further change?

8 THE COURT: Counsel, he can't answer that.

9 MR. COOPERSTEIN: All right, then, I'm sorry for going too
10 speculative in my --

11 THE COURT: I signed an order that said, that made certain
12 representations concerning the medical record, not knowing that
13 that inclusion was an error. I did not see any medical records.

14 MR. COOPERSTEIN: All right.

15 THE COURT: So if I were to see the medical records, I
16 can't say that my conclusion would be the same. I know what I
17 said about danger to the community, but I said -- but I wrote
18 all that after I wrote -- after I read the part about the medical
19 records. Now, I can't say whether the inclusion of medical
20 records would affect that part of the opinion. I have not seen
21 any medical records.

22 MR. COOPERSTEIN: I see, Your Honor. I didn't mean to
23 presume or prejudge the Court's thinking or thought processes. I
24 just wanted to examine the language of the order as it existed.

25 THE COURT: I don't see this as a matter where I just

1 strike through that particular sentence or sentences on the
2 medical records. I have not seen it. The defendant has a right
3 to submit his medical records. I have not seen one medical record
4 in this matter. And until I see a medical record, I can't speak
5 as to what my position would be in relationship to even that
6 section on danger to the community. I would have to see the
7 medical records and assess them and weigh them. I don't know what
8 those medical records provide. I didn't know we had any. And so,
9 we didn't have any, from what I see now. And what was in the
10 opinion was part of a boilerplate from all the other COVID cases I
11 had handled. And this was like a part of a COVID, as most of them
12 say -- not most of them, just about every last one -- well, not --
13 well, all of them. But I dealt with them. If it was something
14 different, then I would write it. But this is what it said, and
15 this is what wound its way into the opinion. Now, it had no
16 business being in there. But I can't say what the outcome would
17 be if this matter is deleted. I can't say that. I would have to
18 see those records.

19 MR. COOPERSTEIN: Well, I have no further questions, then,
20 on that line, Your Honor. Thank you.

21 THE COURT: Okay.

22 Mr. Jupiter, any other questions?

23 MR. JUPITER: Just one.

24 THE COURT: Okay.

25 FURTHER CROSS-EXAMINATION

1 BY MR. JUPITER:

2 Q. Has this Court ever granted or denied a motion for
3 compassionate release without anyone having reviewed records?

4 THE COURT: Say that again, now?

5 BY MR. JUPITER:

6 Q. Has Judge Wingate granted or denied any motion for
7 compassionate release without reviewing medical records?

8 A. I mean, not that I'm aware of.

9 MR. JUPITER: That's it, Your Honor.

10 THE COURT: All right. You can step down. You can step
11 down.

12 THE WITNESS: Thank you, sir.

13 (Witness excused.)

14 THE COURT: Let me turn to these medical records.

15 Mr. Jupiter, are there medical records that you had wanted to make
16 part of the record?

17 MR. JUPITER: I can make some medical records part of the
18 records, Your Honor. I would, in light of what the Court has
19 disclosed, I would ask that this matter be assigned to a different
20 judge for determination of the motion for compassionate release.

21 THE COURT: And what would be the basis for that?

22 MR. JUPITER: Your Honor, this Court has already denied
23 the motion without reviewing medical records, and I don't know how
24 the Court can now take a fresh look at everything after its
25 already, as this Court has pointed out, in its own hand, written

1 out a lengthy decision denying the motion. And saying that even
2 if his medical situation were different -- it wasn't just that one
3 section the Court referred to, but the Court said, even if his
4 medical situation were different, I would deny the motion.

5 So at this point, I don't feel like Mr. Walker has gotten
6 a fresh look at the motion, with his proposed attachments, which I
7 think are essential to every -- an essential part of his motion
8 for compassionate release was based on his medical condition, and
9 that motion was denied. I can't see how this Court would, at this
10 point, be in a position to step aside and say, Well, forget what I
11 did before; now, I'm going to give it a fresh look. I just don't
12 see that. So I would ask that the Court would assign it to a
13 different judge, who would look at the whole motion, as well as
14 his current medical records, and be able to have a fresh look at
15 everything.

16 THE COURT: Okay. What says the government on this same
17 motion, on this ore tenus motion?

18 MR. COOPERSTEIN: Your Honor, with regard to the
19 procedural matter of the record, we have no objection to any
20 attempt by the defendant to supplement the record with any
21 records. We have no objection to submission of records.

22 With regard to the Court remaining on this case, we would
23 oppose any attempt to reassign the case. We believe that the
24 Court's familiarity, having been the trial judge from the
25 beginning of the case, far outweighs any perceived problems. And

1 we have no problem or objections that the Court can review this
2 matter de novo, with the benefit of a supplemented record, and
3 achieve a right result.

4 THE COURT: All right. Thank you.

5 Anything else, Mr. Jupiter?

6 MR. JUPITER: No, Your Honor.

7 THE COURT: I'll take the request under advisement. But
8 in the meantime, two things: One, Mr. Jupiter, you said you had
9 medical records. Then, in case the Court keeps the case, I'd like
10 to have those medical records filed under seal. Is that a
11 problem?

12 MR. JUPITER: No problem, Your Honor.

13 THE COURT: Okay. And the second thing, Mr. Jupiter, if
14 you feel like you have some case on point concerning this matter,
15 I'm going to give you five days to submit that authority.

16 MR. JUPITER: Concerning reassignment?

17 THE COURT: Yes.

18 MR. JUPITER: Yes. Yes, sir.

19 THE COURT: And then, from the government's perspective,
20 if you have any cases, one way or the other, then you have those
21 same five days, that you also have the opportunity to respond to
22 Mr. Jupiter's cases.

23 And, Mr. Jupiter, you have a right for a rebuttal, if you
24 find that he cites some cases that need some kind of response from
25 you. So let's do it this way:

1 Mr. Jupiter, file -- how long from now would it take you
2 to file your records under seal?

3 MR. JUPITER: Well, Your Honor, I -- I have numerous
4 records already. I haven't gotten an updated -- you know, an
5 update on my client's current records, probably in some months.
6 So --

7 THE COURT: Okay. How much time do you need?

8 MR. JUPITER: Well, I'll file -- well, I'll file what I
9 have, Your Honor. I think the Court might be interested in -- in
10 what I had and what I would have filed, I guess, at the time.

11 THE COURT: Well, but if things have changed, Mr. Jupiter,
12 then I need to know that, too, now, in case I keep the case,
13 because I will ask that same question.

14 MR. JUPITER: Well, yeah, BOP's -- sometimes -- they've
15 been pretty good historically. I haven't -- you know, it's been
16 awhile since we've filed a motion for compassionate release. But
17 when we were doing them regularly, they were turning over records
18 pretty quickly. So I don't want to route myself in, but I would
19 ask for, just to be on the safe side, maybe -- maybe -- next week
20 is Christmas, so maybe until the end of next week, I don't know,
21 before the Christmas break.

22 THE COURT: Just give me a time, Mr. Jupiter. I'm going
23 to give you whatever you need.

24 MR. JUPITER: To file updated records?

25 THE COURT: Mm-hmm. So I want to make sure that if you

1 submit some more -- some records under seal, that they are
2 complete. So how much time you think you'll need?

3 MR. JUPITER: Well, why don't -- why don't I go ahead and
4 be on the safe side and -- and put it into January.

5 THE COURT: January what?

6 MR. JUPITER: Say, January 3rd.

7 THE COURT: Okay. January 3rd. And how long would it
8 take you to file your authority, if you have any supplemental
9 authority you want to file?

10 MR. JUPITER: If the Court would allow me until -- let's
11 see, today is Monday the 13th. If the Court would allow me until
12 Monday the 20th.

13 THE COURT: That's enough time?

14 MR. JUPITER: I think so.

15 THE COURT: I thought you had a lot of other things on
16 your plate?

17 MR. JUPITER: Yeah, I'm not going do it, Your Honor,
18 myself.

19 THE COURT: You sure the 20th is okay?

20 MR. JUPITER: Why don't we just -- since this matter has
21 been pending for this long, why don't we just also put it into the
22 new year, to the 3rd.

23 THE COURT: Whatever you want; so the 3rd is okay with
24 you?

25 MR. JUPITER: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. JUPITER: I'll try to get it done before then but --

3 THE COURT: Okay. Thank you. Now, to the other side.

4 You won't get his motion until the 3rd. Now, that is his
5 authorities. How much time do you need to make your response to
6 his authorities?

7 MR. COOPERSTEIN: I would default to the standard time
8 period. According to the local rules, I think, about 11 days,
9 Your Honor, is what this says.

10 THE COURT: Is that what you want?

11 MR. COOPERSTEIN: Yes, sir.

12 THE COURT: Okay. Then you have, all right, 11 days
13 thereafter, and what day would that be?

14 MR. COOPERSTEIN: You said his would be due January the
15 3rd?

16 THE COURT: Yes.

17 MR. COOPERSTEIN: Then that would make it January 14th,
18 for us, then.

19 THE COURT: Okay. Let's go back to you -- thank you.
20 Let's go back to you, Mr. Jupiter. If you want to file a
21 rebuttal, I'll give you five days thereafter, if you want it.

22 Now, if you're saying that you might not want it, or at
23 least if you don't want it, then I won't provide it in the order;
24 otherwise, I'll put it in the order that you have five days
25 thereafter, use it or not use it.

1 MR. JUPITER: That's fine, if you could put it in the
2 order.

3 THE COURT: Okay. It will be placed in the order, but if
4 you decide you don't need it, then notify me if I still have the
5 case, okay?

6 MR. JUPITER: Yes, Your Honor.

7 THE COURT: Now, Mr. Jupiter it's your motion. Is there
8 anything else that you want to submit in reference to this matter?

9 MR. JUPITER: No, Your Honor.

10 THE COURT: Okay. Let me turn to the prosecution. Is
11 there anything else, Mr. Cooperstein, that you want to submit in
12 reference to this motion?

13 MR. COOPERSTEIN: I can't think of anything right now,
14 Your Honor, subject to reviewing the briefs, and see if there are
15 any other case citations we might find, but there's nothing else.

16 THE COURT: Okay. Counsel, thank you very much.

17 And Terri, hold on to this. Put it on the rotary, okay?

18 One second, hold it, before we end. Let me just see if
19 there's anything else I need to put on the record here. Just a
20 second, let me think about something.

21 At this juncture, I don't know whether it's going to be
22 germane or not to this matter. But Adam, would you just stand up
23 right there. Consider yourself still under oath. So the parties
24 can hear you and my court reporter won't have any problems.

25 You made a reference during your testimony that Terri, the

1 courtroom deputy, was not here at a certain time.

2 THE WITNESS: Yes, sir.

3 THE COURT: What do you mean by Terri not being here?

4 THE WITNESS: Terri started with our office, I think, in
5 August of this year.

6 THE COURT: And she is the courtroom deputy?

7 THE WITNESS: Correct. Yes, sir.

8 THE COURT: Prior to her being hired, what was the
9 procedure in the office concerning the office's operations
10 relative to a courtroom deputy's chores on the various cases?

11 THE WITNESS: Law clerks would step in the courtroom
12 deputy role for each one of the cases that we were assigned.

13 THE COURT: And tell how you were assigned cases.

14 THE WITNESS: By terminal digits of the case numbers.

15 THE COURT: This was a procedure worked out with the
16 Court's permission by the law clerks?

17 THE WITNESS: Yes, sir.

18 THE COURT: I did not promulgate the procedure. The three
19 law clerks got together and decided on this procedure.

20 THE WITNESS: Yes, sir.

21 THE COURT: And under that procedure, you would check the
22 terminal digit of a case, that is, the last digit of a case, and
23 that would determine which law clerk was going to handle the law
24 clerk duties on that case?

25 THE WITNESS: Yes, sir.

1 THE COURT: It also determined who would handle this case
2 in the role of a courtroom deputy?

3 THE WITNESS: Yes, sir.

4 THE COURT: Because I did not have a courtroom deputy at
5 that point?

6 THE WITNESS: Yes, sir.

7 THE COURT: And I later hired Terri, who is now here as a
8 courtroom deputy?

9 THE WITNESS: Yes, sir.

10 THE COURT: So then, on those terminal digits, each law
11 clerk had terminal digits that the law clerk was in charge of
12 reviewing the cases, acting in the role of a courtroom deputy.

13 THE WITNESS: Yes, sir.

14 THE COURT: And also advising me in the role of a
15 courtroom deputy. Is that correct?

16 THE WITNESS: Yes, sir.

17 THE COURT: As well as performing chores as a law clerk?

18 THE WITNESS: Yes, sir.

19 THE COURT: So each one of you performed chores as a
20 courtroom deputy as well as a law clerk?

21 THE WITNESS: Yes, sir.

22 THE COURT: On this particular case, how did you end up
23 with this case?

24 THE WITNESS: I believe it ends with one of my terminal
25 digits, Your Honor.

1 THE COURT: You have more than one terminal digit?

2 THE WITNESS: Yes, sir.

3 THE COURT: And so it was supposed to be automatic, that
4 when a case came in with your terminal digit, that case was
5 assigned to you automatically?

6 THE WITNESS: Yes, sir.

7 THE COURT: No matter what the origin was? I mean, if it
8 was a case that went to the Fifth Circuit and came back, but we
9 didn't have very many cases during that time period, I don't
10 believe. But if one went to the Fifth Circuit and came back, you
11 would simply look at the terminal digit?

12 THE WITNESS: Yes, sir.

13 THE COURT: And so, this particular case had your terminal
14 digit?

15 THE WITNESS: I believe so, sir.

16 THE COURT: And you had more than one terminal digit?

17 THE WITNESS: 0, 1, 2, 3.

18 THE COURT: Okay. And then if it had your digit, then you
19 were responsible for that case, both as a law clerk, and as a
20 courtroom deputy?

21 THE WITNESS: Yes, sir.

22 THE COURT: Has the system changed now?

23 THE WITNESS: It changed during 2020, during the COVID
24 pandemic when most people were working remotely. You and I were
25 the only two in the office during that time, so I took over CR

1 duties for all cases. But if you're asking about have we changed
2 our procedure on the terminal digits, now, currently, is that what
3 you're asking, sir?

4 THE COURT: Well, I'm making some adjustments to that now.
5 And I've already spoken to you all about that, that I am making
6 adjustments. But during the time period when this came through,
7 then, let's see, of the three law clerks -- of the three law
8 clerks, we had a number of COVID -- well, of the three law clerks,
9 Nav -- well one of the law clerks, was out of the office and
10 working from home?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: Because of her medical condition?

13 THE WITNESS: Yes, sir.

14 THE COURT: And Carmen was out of the office for a period
15 because of her mother's medical condition?

16 THE WITNESS: That's correct, sir.

17 THE COURT: So during most of that time, you and I were
18 the ones who were here?

19 THE WITNESS: Yes, sir.

20 THE COURT: And then on the COVID cases, the COVID cases,
21 we had a number of the COVID cases that all came in about the same
22 time?

23 THE WITNESS: That's correct, sir.

24 THE COURT: And so, during that time period, who was
25 handling most of the COVID cases?

1 THE WITNESS: I was, Your Honor.

2 THE COURT: And during that time period, did the other two
3 law clerks handle as many COVID cases as you did?

4 THE WITNESS: No, sir.

5 THE COURT: Was there a reason for that?

6 THE WITNESS: You asked me to handle those, sir.

7 THE COURT: Did I ask you or you volunteered to do it?

8 THE WITNESS: Judge, I -- I recall you asking me to do it,
9 but I know you've said that I volunteered to do it, so I just
10 don't remember. As far as I remember --

11 THE COURT: Okay. And during that time period when all of
12 those COVID cases were there, what was our position as to how
13 quickly we should get those COVID cases out?

14 THE WITNESS: As rapidly as possible.

15 THE COURT: There was a time when I assigned some of those
16 COVID cases to the other two law clerks. Do you recall that?

17 THE WITNESS: Yes, sir.

18 THE COURT: Tell them under what circumstances I did that,
19 if you know. Was there any time when you were out of the office
20 for a while?

21 THE WITNESS: Yes, sir, there was.

22 THE COURT: Was there any time period when you were out of
23 the office more than a week?

24 THE WITNESS: Yes, sir; two weeks.

25 THE COURT: And would you tell them why you were out of

1 the office for two weeks?

2 THE WITNESS: I had a personal family issue that I had to
3 deal with.

4 THE COURT: And so then, you were out of the office for
5 two weeks?

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: And during the time that you were out, to your
8 knowledge, did the other law clerks manage to come back from home,
9 working home -- home labors?

10 THE WITNESS: Yes, sir. They had stopped working remotely
11 by that point.

12 THE COURT: And then what did I do with the COVID cases?

13 THE WITNESS: Had them take over their cases that they
14 were assigned terminal digits for.

15 THE COURT: And so then, they handled their COVID cases?

16 THE WITNESS: Yes, sir.

17 THE COURT: When you came back, did you have an
18 opportunity to check to see what the status of the COVID caseload
19 was? Do you know what it was at that point, when you came back?

20 THE WITNESS: I mean, I looked at it when I came back,
21 yes, Your Honor.

22 THE COURT: Okay. And when you came back, to your
23 knowledge, what was the status of our COVID cases?

24 THE WITNESS: I still had some on the table, but I think
25 the other two law clerks had finished theirs up.

1 THE COURT: Okay. And then, what I was left with, would
2 you agree, were cases that were incomplete, the filings had not
3 been fully briefed on those matters?

4 THE WITNESS: Yes, sir. Or we were waiting on medical
5 records because we were waiting on -- and there were two of them
6 we were waiting on assignments of an attorney by the mag judge.

7 THE COURT: By "mag judge," you mean the magistrate judge?

8 THE WITNESS: Magistrate judge, I'm sorry, sir.

9 THE COURT: So then, on those COVID cases that were still
10 on the Court's docket, did the Court address most of those cases,
11 if not all of them? Do you know? Do you know how many cases
12 still needed tweaking at that point?

13 THE WITNESS: As of today, I don't.

14 THE COURT: And as of today, what's the status of the
15 distribution of the COVID cases?

16 THE WITNESS: We all work on our terminal digits.

17 THE COURT: So now, all of the law clerks work on COVID
18 cases?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay.

21 Mr. Jupiter.

22 FURTHER CROSS-EXAMINATION

23 BY MR. JUPITER:

24 Q. Do you know how many -- and Judge Wingate refers to "the
25 COVID cases," these are the motions for compassionate release that

1 are related to the COVID pandemic?

2 A. Yes, sir.

3 Q. Do you know how many there were total that were filed?

4 A. I couldn't begin to tell you, and I would hate to hazard a
5 guess.

6 Q. Okay. I mean, was it more than a hundred?

7 THE COURT: You mean on compassionate release cases?

8 MR. JUPITER: Yeah.

9 THE COURT: No. A 100?

10 MR. JUPITER: I'm just trying to get, were there more than
11 20?

12 THE WITNESS: I don't know. I can't -- I'm not going to
13 hazard a guess.

14 BY MR. JUPITER:

15 Q. Were any granted?

16 A. Sir?

17 Q. Were any granted? Any of these motions granted?

18 A. Not that I'm aware of. But, again, I don't know. Some were
19 entered by the other law clerks, that they worked on with Judge
20 Wingate and Judge Wingate signed for.

21 MR. JUPITER: Okay. No further questions.

22 THE COURT: Anything else over here?

23 MR. COOPERSTEIN: No, thank you, Your Honor.

24 THE COURT: All right. Thank you. Give her back the
25 microphone.

1 All right, folks, we have a schedule. We'll put an order
2 in on this as soon as possible, okay? All right.

3 (Court adjourned.)
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1 COURT REPORTER'S CERTIFICATE

2
3 I, Tamika T. Bartee, Certified Court Reporter, in and for
4 the State of Mississippi, Official Court Reporter for the United
5 States District Court, Southern District of Mississippi, do hereby
6 certify that the above and foregoing pages contain a full, true,
7 and correct transcript of the proceedings had in the aforementioned
8 case at the time and place indicated, which proceedings were
9 recorded by me to the best of my skill and ability.

10 I further certify that the transcript fees and format
11 comply with those prescribed by the Court and Judicial Conference
12 of the United States.

13 THIS the 31st day of December, 2021.
14
15

16 s/ Tamika T. Bartee

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